

**MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD VIRTUALLY VIA WEBEX AND IN-PERSON AT THE ST. LOUIS COUNTY GOVERNMENT SERVICES CENTER, LIZ PREBICH ROOM, VIRGINIA, MN ON THURSDAY, MAY 11, 2023.**

1:37 PM – 4:10 PM

Board of Adjustment members in attendance: Tom Coombe  
Steve Filipovich  
Dan Manick  
Pat McKenzie  
Dave Pollock  
Ray Svatos  
Diana Werschay, Chair

Board of Adjustment members absent: None - 0

**Decision/Minutes for the following public hearing matters are attached:**

**NEW BUSINESS:**

- A. Carl Babich, S9, T57N, R17W (Fayal)
- B. Alan Josephson, S14, T53N, R13W (North Star)
- C. Shane and Rene Roth, S34, T62N, R14W (Eagles Nest)
- D. Thomas Burandt, S34, T62N, R14W (Eagles Nest)
- E. Scott and Susan Packett, S16, T61N, R13W (Unorganized 61-13)

**OTHER BUSINESS:**

**Motion by Coombe/McKenzie** to approve the edited minutes of the April 20, 2023 meeting.

**In Favor:** Coombe, Filipovich, Manick, McKenzie, Pollock, Svatos, Werschay - 7

**Opposed:** None - 0

**Motion carried 7-0**

Board member *Werschay* noted on record that she requested and listened to the previous meeting audio to ensure that there were no negative comments made against staff.

*Donald Rigney*, Acting Secretary, stated that Andrea Zupancich has been appointed by the County Board to serve as the Board of Adjustment alternate member. All Board of Adjustment positions have been filled.

**NEW BUSINESS:**

**Carl Babich**

The first hearing item is for Carl Babich, property is located at S9, T57N, R17W (Fayal). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a principal structure at a reduced shoreline setback where 100 feet is required.

The applicant withdrew their application after the notice period, stating they could build a principal structure that meets shoreline setbacks. The hearing was opened and closed. No action was needed. No action was taken.

**Alan Josephson**

The second hearing item is for Alan Josephson, property is located at S14, T53N, R13W (North Star). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow an accessory structure at a reduced shoreline setback where 100 feet is required. *Paul Butler*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing a 26 foot by 30 foot garage to be located 85 feet from Briar Lake where 100 feet is required.
- B. The proposed height of the structure is 16 feet.
- C. The structure meets all other required setbacks.
- D. The parcel currently contains a dwelling, septic system, well, and two small sheds.
- E. The existing dwelling has good screening from road, some screening from adjacent properties, and limited to no screening from the lake.
- F. The parcel has an average slope of 13 percent from the high point of the parcel to the Ordinary High Water Level of Briar Lake.

*Paul Butler* reviewed staff facts and findings as follows:

A. Official Controls:

- 1. St. Louis County Zoning Ordinance 62, Article III, Section 3.4, states shore setback and shore impact zone requirements. Briar Lake is classified as a Recreation Development lake. Recreation Development lakes have a 100 foot setback minimum and a 50 foot shore impact zone.
  - a. The 26 foot by 30 foot garage is proposed to be located 85 feet from Briar Lake.
  - b. The existing dwelling is approximately 30 feet from Briar Lake.
- 2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
- 3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- 4. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd.10.

B. Practical Difficulty:

- 1. Due to the shape of the lot, the area that meets the 100 foot setback from Briar Lake is very limited.
  - a. The septic location further restricts conforming area on the parcel.
  - b. Briar Lake Shores was platted in 1956.
- 2. There are no alternatives for the proposed 26 foot by 30 foot garage that would not require variance.

- a. There may be room on the parcel for a smaller structure to fit outside of the shoreline setback while still meeting septic and property line setbacks.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area. A majority of the parcels on Briar Lake are utilized for seasonal or year-round residential use.
2. Other parcels in the immediate area also have very limited conforming area and contain structures within the required 100 foot shoreline setback.
3. There has been a similar variance within the immediate area.
  - a. Lot 22 of Briar Lake Shores received a variance in 1988 for a 32 foot by 24 foot garage located 70 feet from the shoreline.

D. Other Factors:

1. Based on the applicant's site sketch, the proposed structure meets all other required setbacks including property line, road, and septic.
2. The proposed garage may affect the ability of any future replacement dwelling to move further from the lake.

*Paul Butler* noted one item of correspondence from North Star Township that had no comment or questions about the variance request. This item was provided to the Board of Adjustment prior to the hearing.

### **RECOMMENDED CONDITIONS**

Conditions that may mitigate the variance for a 768 square foot accessory structure (garage) to be located at a reduced shoreline setback as proposed include, but are not limited to:

1. Stormwater from the structure shall not discharge directly onto adjacent properties or into the lake.
2. St. Louis County On-Site Wastewater sewage treatment standards shall be followed.
3. The structure shall be unobtrusive (earth-tone) colors, including siding, trim, and roof.
4. All other local, county, state, and federal regulations shall be met.

*Alan Josephson*, 7773 West Briar Lake Drive, Duluth, the applicant, stated he moved to this house with his family. They want to stay on this property. They have a 700 square foot dwelling and they need additional storage. They considered a smaller accessory structure, but the location of the proposed garage is where they park their vehicles now.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Svatos* noted the unusual shape of the lot.
- B. Board member *Coombe* asked why the applicant limited their structure height to 16 feet. *Alan Josephson* stated he did not know what the rules were for height requirements. His contractor asked him the same question.
- C. Board member *Pollock* asked what height the applicant would be allowed. *Donald Rigney*, Acting Secretary, stated for a principal structure the height allowed would be 25 feet outside the shore impact zone. The same goes for any nonconforming accessory structure

within the shoreline setback. Board member *Pollock* asked if the applicant would be allowed a structure height within the height allowed instead of putting it at a specific height. Board member *Coombe* stated the variance request was for the structure at that location, not for structure height. Board member *Pollock* stated the applicant would be allowed a structure height up to 25 feet. Board member *McKenzie* stated that the structure height should be covered under the fourth recommended condition: All other local, county, state, and federal regulations shall be met.

- D. Board member *Pollock* asked if there is a limitation on the size of garage allowed. *Donald Rigney* stated there is no specific size. Board member *Pollock* stated the applicant could increase the size of the garage. *Donald Rigney* stated that the structure would need to meet setbacks as well as meet 15 percent building footprint and 25 percent impervious surface coverage.
- E. Board member *Coombe* offered a friendly amendment to add a condition that the structure height shall be no greater than 25 feet and recommended the structure height be removed from the motion.

## **DECISION**

**Motion by McKenzie/Coombe** to approve a variance for a 768 square foot accessory structure (garage) to be located at a reduced shoreline setback of 85 feet where 100 feet is required, based on the following facts and findings:

### A. Official Controls:

- 1. St. Louis County Zoning Ordinance 62, Article III, Section 3.4, states shore setback and shore impact zone requirements. Briar Lake is classified as a Recreation Development lake. Recreation Development lakes have a 100 foot setback minimum and a 50 foot shore impact zone.
  - a. The 26 foot by 30 foot garage is proposed to be located 85 feet from Briar Lake.
  - b. The existing dwelling is approximately 30 feet from Briar Lake.
- 2. The official controls dictate such things as shoreland setbacks for structures and also recognizes there may be situations in which variances from the ordinance may be required to help facilitate reasonable use of the property.
- 3. The variance request is in harmony with the general purpose and intent of official controls.

### B. Practical Difficulty:

- 1. The applicant wishes to build a reasonably-sized garage on his parcel but is restricted as to where it can be placed because of the size and shape of the parcel, driveway access for his neighbors, and the septic tank and septic field.
- 2. Practical difficulty has been demonstrated in complying with the official controls.

### C. Essential Character of the Locality:

- 1. The neighborhood is an area with approximately 30 seasonal cabins and year-round residents, many of which have limited conforming areas and have structures within the shoreline setback.
- 2. The applicant's request to construct a garage is not a new use to the area.
- 3. The variance request will not alter the essential character of the locality.

D. Other Factors:

1. The proposed structure meets all other setback requirements.
2. The applicant shares a driveway with a neighbor which dictates the structure's placement.
3. Trees were removed from the proposed site many years ago according to the applicant.

The following conditions shall apply:

1. Stormwater from the structure shall not discharge directly onto adjacent properties or into the lake.
2. St. Louis County On-Site Wastewater sewage treatment standards shall be followed.
3. The structure shall be unobtrusive (earth-tone) colors, including siding, trim, and roof.
4. All other local, county, state, and federal regulations shall be met.
5. The structure's height shall not exceed 25 feet.

**In Favor:** Coombe, Filipovich, Manick, McKenzie, Pollock, Svatos, Werschay - 7

**Opposed:** None - 0

**Motion carried 7-0**

**Shane and Rene Roth**

The third hearing item is for Shane and Rene Roth, property is located at S34, T62N, R14W (Eagles Nest). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article VI, Section 6.2 B, to allow a second principal structure on a parcel that will not be properly placed so the property can be divided at a later date into conforming lots. *Ada Tse*, St. Louis County Planner, reviewed the staff report as follows:

- A. The applicant is proposing a second principal dwelling to replace an existing 1,080 square foot pool house.
- B. There is an existing 73 foot by 54 foot (1,846 square foot) dwelling on the parcel, which is the first principal dwelling.
- C. The proposed second dwelling will be 55 foot by 25 foot (1,190 square foot) and 26 feet in height.
- D. The proposed second principal dwelling will be placed within approximately ten feet of the existing principal dwelling.
- E. The parcel has good screening from the lake, road, and neighboring properties.
- F. The parcel gradually slopes from Swanson Shores Road down to the shoreline with an approximate elevation change of 36 feet.

*Ada Tse* reviewed staff facts and findings as follows:

A. Official Controls:

1. Zoning Ordinance 62, Article VI, Section 6.2 B., states that there shall be sufficient lot area per principal structure to equal the minimum dimensional standards and the structures can be placed so the property can be divided at a later date into conforming lots.
  - a. The current parcel is 2.2 acres and has 372 feet of shoreline frontage.

- b. Two principal structures require 300 feet in lot width, 2.0 acres in lot size, and the structures to be placed at least 40 feet apart.
- 2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
- 3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- 4. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22 Subd. 10.

B. Practical Difficulty:

- 1. There are alternatives that do not require a variance:
  - a. The applicant can propose a dwelling that conforms to accessory dwelling standards.
  - b. Construct an addition to the existing principal structure that meets standards.

C. Essential Character of the Locality:

- 1. The area consists of residential and vacant lakeshore lots.
- 2. There have been no similar variance requests within Swanson's Shores Plat.

D. Other Factor:

- 1. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.

*Ada Tse* noted two items of correspondence from Mark Kawell in support of and Christopher Tumasmith with concerns about expanding the septic field, but otherwise in support of the variance request. These items were provided to the Board of Adjustment prior to the hearing.

**RECOMMENDED CONDITIONS**

Conditions that may mitigate the variance to allow a second principal structure on a parcel that will not be properly placed so the property can be divided at a later date into conforming lots as proposed include, but are not limited to:

- 1. All other Zoning Ordinance requirements shall be met.
- 2. St. Louis County On-Site Wastewater SSTS standards shall be followed.

*Shane Roth*, 4043 Swanson Shores Road, the applicant, stated the primary dwelling is only 1,876 square feet in size and has two bedrooms. He has children and grandchildren that have no place to stay on this property. He wants a few more bedrooms and additional living space in the second dwelling. It will be the same size and shape as the existing structure. The pool will be filled in and the dwelling will be placed on the existing foundation. No one will know the pool does not exist anymore. The elevation map shows the unique shape of the lot as it is narrow at the top and steep

from back to front. There may have been fill brought in where the house is because that area is flat. If he moved the proposed structure to the other side, there would be no way to access the lake because the hill is too steep. The only practical thing is to use the existing foundation. He has no desire to subdivide the property. The drainfield has a permanent easement that flows onto the neighbor's property. He is proposing to add a holding tank that can be accessed and pumped out. That plan is currently being worked on. He does not want to rent the property out. He just wants extra space for guests.

One member of the audience spoke.

*Sean Murphy*, 1260 Cedar Drive, Berthold CO, stated he is a licensed architect and is a new landowner three lots down from the subject parcel. This does not feel like a substantial variance request since the structure is being built on an existing foundation.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *McKenzie* asked if the proposed second dwelling and the pool house will share the same foundation. *Ada Tse* stated yes. Board member *McKenzie* stated a correspondent was confused about this.
- B. Board member *Svatos* asked about the second dwelling being placed ten feet within the first principal dwelling. *Ada Tse* stated that the existing pool house is located about ten feet from the principal dwelling.
- C. Board member *Coombe* asked if the variance is because of where the dwelling is located because the applicant has more than double the shoreline and double the acreage required for two principal structures. *Ada Tse* stated yes. *Donald Rigney*, Acting Secretary, added that when someone applies for a second principal structure, the structures need to be placed so that the lot can be subdivided in the future. In this case, the dwelling is not in the correct location.
- D. Board member *Pollock* stated this is a unique case where common sense would dictate that the lot could not be divided at a later date.
- E. Board member *Pollock* asked if the applicant has worked with a septic professional on the holding tank. *Shane Roth* stated they have been working with one. Board member *Pollock* asked if they could attach an ejector pump to their existing septic. *Shane Roth* stated that this is not practical. There is a detached garage directly across from the pool house. The septic tank is located next to the garage. He would need to tunnel under the garage or go around the garage in order to access the septic tank. The tank may not meet the physical requirements for four bedrooms and four bathrooms. He would need a larger tank and would need to start over again. There is room for a holding tank.
- F. Board member *Coombe* asked if the bank under the pool house can hold a new dwelling. *Shane Roth* stated his architect told him that it would.

## **DECISION**

**Motion by Coombe/Svatos** to approve a variance to allow a second principal structure on a parcel that will not be properly placed so the property can be divided at a later date into conforming lots, based on the following facts and findings:

A. Official Controls:

1. Zoning Ordinance 62, Article VI, Section 6.2 B., states that there shall be sufficient lot area per principal structure to equal the minimum dimensional standards and the structures can be placed so the property can be divided at a later date into conforming lots.
  - a. The current parcel is 2.2 acres and has 372 feet of shoreline frontage.
  - b. Two principal structures require 300 feet in lot width, 2.0 acres in lot size, and the structures to be placed at least 40 feet apart.
2. The applicant wants to replace an existing 1,080 square foot pool house with an approximately 55 foot by 25 foot (1,190 square foot) principal dwelling that will be 26 feet in height using the same foundation.
3. The variance request is in harmony with the general purpose and intent of official controls.

B. Practical Difficulty:

1. The site and structure already exist. The principal dwelling is replacing a pool house using the same foundation.
2. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The area consists of residential and vacant lakeshore lots.
2. There have been no similar variance requests within Swanson's Shores Plat.
3. The location of the structure is well-screened.
4. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. The structure will be located approximately 160 feet from the shoreline.

The following conditions shall apply:

1. All other Zoning Ordinance requirements shall be met.
2. St. Louis County On-Site Wastewater SSTS standards shall be followed.
3. The structure shall be unobtrusive (earth-tone) colors, including siding, trim, and roof.
4. Demolition waste shall be disposed of in a manner acceptable to St. Louis County Solid Waste Ordinance 45.
5. The lot shall not be subdivided in the future.

**In Favor:** Coombe, Filipovich, Manick, McKenzie, Pollock, Svatos, Werschay - 7

**Opposed:** None - 0

**Motion carried 7-0**

**Thomas Burandt**

The fourth hearing item is for Thomas Burandt, property located at S34, T62N, R14W (Eagles Nest). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D., to allow an addition to a nonconforming principal structure located within the shore impact zone that will exceed the 200 square feet allowed. *Ada Tse*, St. Louis County Planner, reviewed the staff report as follows:



- A. The applicant is proposing to construct a 376 square foot addition to the side of a nonconforming dwelling where 200 square feet is allowed.
- B. The existing dwelling is nonconforming to the shoreline setback at a distance of 45 feet where a 100 foot shoreline setback is required.
- C. The applicant applied for and was granted a variance in 2021 for a 304 square foot addition, which was not constructed.
- D. The applicant is requesting an additional 72 square feet to the approved 2021 addition for a total addition of 376 square feet.
- E. The parcel has suitable screening from the lake, road, and neighboring properties.
- F. The parcel contains steep slope within the shoreline setback.

*Ada Tse* reviewed staff facts and findings as follows:

A. Official Controls:

- 1. St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D., allows an addition size of up to 200 square feet for a nonconforming principal dwelling located between 25 feet and the shore impact zone. The applicant is requesting a total addition size of 376 square feet to the dwelling.
- 2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
- 3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.

B. Practical Difficulty:

- 1. In 2003, a variance was approved on the parcel to allow a third story addition to the existing two-story nonconforming structure with a total height of 32 feet.
- 2. In 2021, a variance was approved on the parcel to allow an addition of 304 square feet to the existing nonconforming structure and revoked the 2003 variance. The applicant can still construct the addition as originally proposed.
- 3. There are alternatives that do not require a variance:
  - a. The structure would be allowed an addition of up to 200 square feet in size through a performance standard permit.
  - b. Construct an addition that conforms to the approved 2021 variance.

C. Essential Character of the Locality:

- 1. There have been two variances already approved on the parcel: one in 2003 and one in 2021.
- 2. The area consists of developed lakeshore lots with both conforming and nonconforming structures.
- 3. There have been no similar variance requests within the plat.

D. Other Factors:

- 1. The applicant received a variance for a 304 square foot addition that is still valid. The addition has not been constructed.

2. The applicant is proposing an additional 72 square feet to the 2021 approved 304 square feet for a total addition size of 376 square feet.

*Ada Tse* noted one item of correspondence from Kristin Rantala and Alan Zylka opposed to the variance request. This item was provided to the Board of Adjustment prior to the hearing.

### **RECOMMENDED CONDITIONS**

Conditions that may mitigate the variance to allow an addition to a nonconforming principal structure that will exceed the square footage allowed as proposed include, but are not limited to:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. St. Louis County On-Site Wastewater SSTS standards shall be followed.
3. The stormwater runoff from the proposed structure shall not directly discharge into the lake or on adjacent lots.
4. The previous variance from 2021 shall be revoked so that the total addition allowed is 376 square feet.
5. The previous variance from 2003 shall remain revoked.

*Thomas Burandt*, 1268 Walsh Road, Ely, the applicant, stated they did not build their approved addition two years ago because they did not have a contractor at that time. Now they have their contractor ready to go and they want to eliminate the staircase issue.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* asked if the 2003 variance was never used. *Thomas Burandt* stated that as a couple in their 70s, the last thing they wanted was more stairs. This proposal was never going to happen. In 2021, they had just moved to this property and they needed more space as the dwelling is only 680 square feet with the 8 foot by 12 foot porch that they intended to incorporate into the square footage. There is a nonconforming staircase inside the structure that he has fallen twice on and injured himself. While the option was to have an elevator inside, an architect told them to adjust the staircase back six feet with the option of having a chair lift to assist if needed.
- B. Board member *Pollock* asked the applicant if the contractor had any other suggestions about the 6 foot by 12 foot staircase addition and if they had discussed extending the addition across the length of the house. *Thomas Burandt* stated that this was discussed but this was not needed. They want an entry closet and a staircase going downstairs. There might be a deck off to the side where they can sit when they come in. He had talked with *Mark Lindhorst* about adding an overhang over the entry, which would be considered an addition. Board member *Werschay* stated they need to follow the square footage requested on the application. *Donald Rigney*, Acting Secretary, stated the Board cannot change the square footage being applied for because of how the case was noticed. The applicant can have an overhang of up to three feet before it is considered an open porch. The applicant is still allowed the square footage approved in 2021 unless this variance is granted.

## DECISION

**Motion by McKenzie/Manick** to approve a variance to allow a 376 square foot addition to a nonconforming principal structure that will exceed the 200 square feet allowed, based on the following facts and findings:

### A. Official Controls:

1. St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 D., allows an addition size of up to 200 square feet for a nonconforming principal dwelling located between 25 feet and the shore impact zone. The applicant is requesting a total addition size of 376 square feet to the dwelling.
2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
4. The applicant states he needs approval for an additional 72 square feet so that he can construct a staircase for himself and his wife. The 2021 variance did not take into account the additional square footage needed to properly build a staircase.
5. The variance is in harmony with the general purpose and intent of official controls because of the health, safety, and welfare of the County's inhabitants. This is also a goal of the Ordinance.

### B. Practical Difficulty:

1. In 2003, a variance was approved on the parcel to allow a third story addition to the existing two-story nonconforming structure with a total height of 32 feet.
2. In 2021, a variance was approved on the parcel to allow an addition of 304 square feet to the existing nonconforming structure and revoked the 2003 variance. The applicant can still construct the addition as originally proposed.
3. There are alternatives that do not require a variance:
  - a. The structure would be allowed an addition of up to 200 square feet in size through a performance standard permit.
  - b. Construct an addition that conforms to the approved 2021 variance.
4. The 2021 variance did not provide enough square footage to properly build a staircase.
5. Practical difficulty has been demonstrated in complying with the official controls.

### C. Essential Character of the Locality:

1. The proposed 6 foot by 12 foot addition will not be visible from the lake from Walsh Road.
2. The variance request will not alter the essential character of the locality.

### D. Other Factor:

1. Other than housekeeping emails from Emily Anderson (On-Site Wastewater Division) regarding the septic review, there was one email from landowners who own property 750 feet from the applicant's parcel. This email objected to granting the variance

request. The neighbors may not understand the scope of the modest request made by the applicant.

The following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. St. Louis County On-Site Wastewater SSTS standards shall be followed.
3. The stormwater runoff from the proposed structure shall not directly discharge into the lake or on adjacent lots.
4. The previous variance from 2021 shall be revoked so that the total addition allowed is 376 square feet.
5. The previous variance from 2003 shall remain revoked.

**In Favor:** Coombe, Filipovich, Manick, McKenzie, Pollock, Svatos, Werschay - 7

**Opposed:** None - 0

**Motion carried 7-0**

**Scott and Susan Packett**

The fifth hearing item is for Scott and Susan Packett, property located at S16, T61N, R13W (Unorganized 61-13). The applicant is requesting after-the-fact relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a principal dwelling to be located at a reduced shoreline setback where 100 feet is required and relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.3 to allow a dwelling addition to a nonconforming principal dwelling where no additions are allowed.

*Donald Rigney*, St. Louis County Interim Land Use Manager, reviewed the staff report as follows:

- A. The applicant is requesting after-the-fact approval to allow a dwelling to be approximately 48 feet from the shoreline where 100 feet is required.
- B. The existing dwelling is 975 square feet in size.
- C. This dwelling replaced a 568 square foot nonconforming dwelling that was located approximately 42 feet from the shoreline.
- D. A performance standard permit for a 400 square foot addition to the rear of the 568 square foot nonconforming dwelling was issued in 2015. The 568 square foot dwelling was then removed, and a new 701 square foot dwelling was constructed in a new location without permit.
- E. In 2016, a porch was added to the new dwelling toward the lake without permit.
- F. The final square footage of the new existing dwelling, including the porch, is 975 square feet.
- G. The existing dwelling has a shoreline setback that is approximately six feet greater than the previous nonconforming dwelling.
- H. A replacement structure may have been allowed through a performance standard permit for the replacement of a nonconforming structure if the dwelling, including the porch was 968 square feet or less in footprint.
- I. The applicant is also requesting a 15 foot by 12 foot (180 square feet) addition to a nonconforming structure where no expansion is allowed.

- J. If the after-the-fact dwelling is granted a variance to allow it to remain at the nonconforming shoreline setback, the structure would not be eligible for a performance standard permit for an addition to a nonconforming structure.
- K. This is due to the dwelling being constructed at the nonconforming location after the required shoreline setback standards had been established.
- L. The proposed addition will not increase the existing nonconforming shoreline setback.
- M. There is good screening from the lake, road, and adjoining properties.
- N. The property has rolling topography and slopes towards the lake. There is a total of 14 feet in elevation change.
- O. There is floodplain located on the property. Any proposed structures must meet floodplain standards.

*Donald Rigney* reviewed staff facts and findings as follows:

A. Official Controls:

- 1. Bear Island Lake is a Recreational Development lake which requires a shoreline setback of 100 feet; the after-the-fact dwelling is located at a shoreline setback of 48 feet.
- 2. Zoning Ordinance 62 states that if the original dwelling existed before shoreline setbacks were established, the dwelling may be expanded once with a performance standard permit.
  - a. The after-the-dwelling was constructed in 2015; therefore, there can be no expansion without variance.
- 3. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
- 4. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- 5. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22 Subd. 10.
- 6. Through the Land Use Goals, Objectives and Implementation sections, the Land Use Plan is meant to provide ways of improving the variance process and encourages adherence to existing criteria to ultimately reduce the volume of variance applications received by the county.

B. Practical Difficulty:

- 1. The property is a peninsula that is affected by the required shoreline setback from two directions.
  - a. The required shoreline setback and existing location of other structures and the septic system limits conforming locations for redevelopment.
- 2. The subject property conforms to the minimum zoning requirements for lot size and width.

3. The original dwelling may have been allowed to be replaced with a performance standard permit for a replacement of a nonconforming structure if the dwelling including the porch was 968 square feet or less in footprint.
  - a. The existing structure is 975 square feet (seven square feet greater than allowed through performance standard permit).
  - b. If the dwelling is reduced in size by seven square feet, a performance standard permit may be issued to bring the after-the-fact dwelling into compliance.
4. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.ii, states:
  - a. “The plight of the landowner is due to circumstances unique to the property not created by the landowner.”
  - b. “Economic considerations alone shall not constitute practical difficulties if a reasonable use for the property exists under the terms of this ordinance.”
5. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.iv, states:
  - a. When an applicant seeks a variance for additions or alterations to a lot or structure that have already commenced, it shall be presumed that the changes to the lot or structure were intentional and the plight of the landowner was self-created, as per MN Statutes, Section 394.27, Subd. 7 and all acts amendatory thereof.
6. There are no alternatives that do not require variance for the proposed addition to the nonconforming dwelling due to the dwelling being constructed at the nonconforming location after the required shoreline setback standards had been established.
7. Zoning Ordinance 62 states that “practical difficulties” as used in connection with granting a variance means that the property in question cannot be put to a reasonable use under the conditions allowed by this ordinance.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use for the area as there are other residential properties in the area.

D. Other Factors:

1. A performance standard permit for a 400 square foot addition to the rear of the 568 square foot nonconforming dwelling was issued in 2015.
  - a. The addition was never constructed.
  - b. The 568 square foot dwelling was removed, and a 701 square foot dwelling was rebuilt in a new location without permit in 2015.
  - c. The 701 square foot dwelling was expanded in 2016 with a 274 square foot porch towards the lake without permit.
2. The proposed 15 foot by 12 foot addition will be located approximately 57 feet from the shoreline.
3. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.

- E. Was the construction completed prior to applying for the variance? If not, what extent of the construction has been completed?

1. The applicant contacted county staff to apply for an addition which brought the violation to light.
  2. The applicant was made aware of and discussed the alternatives that do not require a variance with staff and elected to pursue a variance to correct the violation.
- F. How would the county benefit by enforcement of the ordinance if compliance were required?
1. The county would benefit by enforcement of the Ordinance because it would promote the regulation of setbacks and land use in accordance with the St. Louis County Comprehensive Land Use Plan and Zoning Ordinance 62.
  2. Approval of an after-the-fact variance for a structure that was not permitted without sufficient practical difficulty is not keeping with the intent of the St. Louis County Zoning Ordinance or St. Louis County Comprehensive Land Use Plan.

*Donald Rigney* noted one item of correspondence from Steven and Deborah Miller in support of the variance request. This item was received the day of and submitted into the record at the hearing.

### **RECOMMENDED CONDITIONS**

Conditions that may mitigate the after-the-fact variance to allow a principal dwelling to be located at a reduced shoreline setback and a variance to allow a dwelling addition to a nonconforming principal dwelling where no additions are allowed as proposed include, but are not limited to:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
3. St. Louis County On-Site Wastewater SSTS standards shall be followed.
4. No further expansion of the dwelling shall be allowed.

*Scott Packett*, 150 South 92nd Street, Lincoln, NE, the applicant, stated they have owned this property for six years. During that time, they noticed that the structure was changing; the floors were dipping, doors were not closing, walls were moving away from the ceiling. They also needed more room, which was when they requested the permit for the addition. Their builder was someone they had used before, and he did not think they had anything to build onto. The structure was falling apart. The first thing they did was get the permit. The builder told them they were good to go as far as replacing the structure because they were salvaging a few walls. They found out later they were not in compliance and things should have been done differently.

*Susan Packett*, 150 South 92nd Street, Lincoln, NE, the applicant, stated the structure was moved 15 feet back from where it had been located. If they had known they needed additional permits, they would have applied for them. They have always tried to be in compliance.

Two members of the audience spoke.

*Jerry Crary*, 9321 West Franklin Avenue, St. Louis Park, MN, stated they are a neighbor to the Packetts. He asked if there would be any tree cover removed from the property line. He is in support of the addition and more space for the applicant. *Scott Packett* stated they would not need to remove a single tree.

*Deborah and Steven Miller*, 8993 Bear Island Lake Road, Babbitt, stated the Packetts are conscientious lakeshore owners that keep the property immaculate and they have no objections to the variance request.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Coombe* asked about the status of the septic system. *Donald Rigney* stated the septic system passed record review for the proposal.
- B. Board member *McKenzie* asked how the shoreline setback is measured. *Donald Rigney* stated there is a set Ordinary High Water Mark. The addition does not encroach any closer to the shoreline than what already exists. Measuring was done from aerial photography and from a site visit. From aerial photography, what was there in 2013 was six feet closer to the shoreline than what is currently there. The structure is further back from the shoreline.
- C. Board member *McKenzie* asked how the dwelling could be placed to meet conforming setbacks. *Donald Rigney* stated the garage is at a conforming location. There is also a small conforming area by the garage.
- D. Board member *Werschay* asked if the applicant is seven square feet beyond what would have been allowed. *Donald Rigney* stated this is based on what is allowed for an addition size for a structure outside the shore impact zone. Without a survey or knowing the exact location of the shoreline, the 48 foot shoreline setback is approximate.
- E. *Donald Rigney* stated there was only a performance standard permit issued for an addition to the original structure. There have been no permits applied for or approved since.
- F. Board member *Manick* stated the applicant had the foresight enough to get the permit for an addition. But when the builder tore down that structure and built a new structure, there was no foresight that a permit may be required? *Scott Packett* stated he was going by what his builder had said.
- G. Board member *Coombe* asked about the front porch and asked about a permit for that addition. *Scott Packett* stated they thought they were covered by the original addition permit. This was constructed by a second builder.
- H. Board member *Manick* stated this feels like the applicant is asking for a lot. Board member *Pollock* stated this is an unusual case. This needs to be taken in steps, from the new structure to the porch addition. How does the Board deal with this as far as the new structure and the new porch addition. These need to be taken care of before the Board can consider a request for a new dwelling addition. For an after-the-fact variance, they have been trained to see that these applicants are guilty until they prove their innocence.
- I. Board member *Svatos* stated the applicant seemed to be honest and was taking their contractor at their word.
- J. Board member *Coombe* stated the one good thing about removing the old structure and building a new cabin was the fact it was moved back. Even the new front porch was further back than the original structure. The only way to bring this structure into compliance is to move it back to the 100 foot setback. This issue has existed for eight years and should be taken care of now. The only thing that does is cost money. Board member *Pollock* added that the applicant is an absentee owner that lives in Nebraska and trusted a contractor to do the work.



- K. Board member *McKenzie* stated they should approve the variance request for the dwelling and deny the variance request for the addition request. The structure is seven square feet beyond what would have been allowed with the original dwelling and the approved 400 square foot addition. *Donald Rigney* stated that the Board has made this type of approval before by splitting the decision into two pieces. If the after-the-fact variance is not approved, the Board would not be able to act on the addition request. The structure would need to be brought into compliance first. Board member *Pollock* asked what compliance would need to be done should the variance for an after-the-fact structure be denied. *Donald Rigney* stated the applicants would likely need to remove seven square feet of the dwelling for an after-the-fact performance standard permit to be issued. The structure would also need to meet a 50 foot shoreline setback. While other steps may be involved, things were simplified for the after-the-fact variance request to a new dwelling at a reduced shoreline setback. This includes the new dwelling and the new front three-season porch. The applicants would be allowed a 968 square foot structure that would meet the performance standard requirement. The existing performance standard permit was for an addition to a structure that no longer exists.
- L. Board member *Coombe* noted that to deny the addition would allow the applicant to apply for a separate 12 foot by 15 foot structure located three feet from the dwelling. *Donald Rigney* stated the applicant would be allowed 150 square feet or less for an accessory structure that meets setbacks and is used for storage. Board member *Pollock* stated that the addition would have been additional square footage of living space.
- M. Board member *Werschay* asked if there is a provision where the applicant can tear down a structure but reuse the same structure footprint. Board member *Coombe* stated this is Minnesota statute 394.27. A structure can be replaced in its exact footprint and at the same size. A permit is still required.
- N. Board member *McKenzie* asked about a denial without prejudice. *Donald Rigney* stated that a denial without prejudice is typically done to obtain more information from the applicant in order to make a decision one way or the other. Board member *Coombe* stated there is no more information that staff can give. Board member *Werschay* agreed and stated there is little more staff can do.
- O. Board member *McKenzie* asked if a survey reveals the shoreline setback is 50 feet, what is the applicant able to do? *Donald Rigney* stated a survey would not matter if the variance is approved. If the variance is denied, the applicant would need to remove seven square feet on the structure and get an after-the-fact performance standard permit if the dwelling met a 50 foot shoreline setback. Because the structure was placed there after the shoreline setback standards were set, any addition to this structure would require a variance.
- P. Board member *Pollock* asked if the proposed addition would meet the shoreline setback. *Donald Rigney* stated the proposed addition would be located 57 feet from the shoreline. The addition would be further from the lake but would not meet the shoreline setback. Any addition, no matter what direction the addition goes in, would require a variance because the structure was built too close to the lake.
- Q. Board member *Manick* stated that condition four should be removed because a variance would be required no matter what the applicant was adding onto the dwelling.

## **DECISION**

**Motion by Manick/Pollock** to approve an after-the-fact variance to allow a principal dwelling to be located at a reduced shoreline setback where 100 feet is required, and to deny a variance request to allow a dwelling addition to a nonconforming principal dwelling where no additions are allowed, based on the following facts and findings:

### **A. Official Controls:**

1. Bear Island Lake is a Recreational Development lake which requires a shoreline setback of 100 feet; the after-the-fact dwelling is located at a shoreline setback of 48 feet.
2. Zoning Ordinance 62 states that if the original dwelling existed before shoreline setbacks were established, the dwelling may be expanded once with a performance standard permit.
  - a. The after-the-dwelling was constructed in 2015; therefore, there can be no expansion without variance.
3. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
4. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
5. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22 Subd. 10.
6. Through the Land Use Goals, Objectives and Implementation sections, the St. Louis County Comprehensive Land Use Plan is meant to provide ways of improving the variance process and encourages adherence to existing criteria to ultimately reduce the volume of variance applications received by the county.
7. Official controls exist to regulate land use to protect land, woods, property, and property values. Regulating land use to do so involves specific regulations such as setbacks, variances, and permits.
8. The applicant's history with the parcel has been discussed in sufficient detail and in the staff presentation.
9. The variance request is not in harmony with the general purpose and intent of official controls. However, this variance approval would be a compromise.

### **B. Practical Difficulty:**

1. The property is a peninsula that is affected by the required shoreline setback from two directions.
  - a. The required shoreline setback and existing location of other structures and the septic system limits conforming locations for redevelopment.
2. The subject property conforms to the minimum zoning requirements for lot size and width.
3. The original dwelling may have been allowed to be replaced with a performance standard permit for a replacement of a nonconforming structure if the dwelling including the porch was 968 square feet or less in footprint.

- a. The existing structure is 975 square feet (seven square feet greater than allowed through performance standard permit).
- b. If the dwelling is reduced in size by seven square feet, a performance standard permit may be issued to bring the after-the-fact dwelling into compliance.
4. Zoning Ordinance 62, Article VIII, Section 8.6 B(4)b.ii, states:
  - a. “The plight of the landowner is due to circumstances unique to the property not created by the landowner.”
  - b. “Economic considerations alone shall not constitute practical difficulties if a reasonable use for the property exists under the terms of this ordinance.”
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  - a. When an applicant seeks a variance for additions or alterations to a lot or structure that have already commenced, it shall be presumed that the changes to the lot or structure were intentional and the plight of the landowner was self-created, as per MN Statutes, Section 394.27, Subd. 7 and all acts amendatory thereof.
6. There are no alternatives that do not require variance for the proposed addition to the nonconforming dwelling due to the dwelling being constructed at the nonconforming location after the required shoreline setback standards had been established.
7. Zoning Ordinance 62 states that “practical difficulties” as used in connection with granting a variance means that the property in question cannot be put to a reasonable use under the conditions allowed by this ordinance.
8. Correcting the compliance issue would mean cutting off seven square feet of the existing dwelling or moving the structure, both of which are not practical.
9. Practical difficulty has been demonstrated in complying with the official controls.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use for the area as there are other residential properties in the area.
2. The variance request will not alter the essential character of the locality.

D. Other Factor:

1. The Board approves the after-the-fact variance for a dwelling and is denying a variance for the proposed addition. This is a compromise for the applicant to be able to keep their dwelling.

The following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the proposed structure shall not discharge directly into the lake or on adjacent lots.
3. St. Louis County On-Site Wastewater SSTS standards shall be followed.

**In Favor:** Coombe, Filipovich, Manick, McKenzie, Pollock, Svatos, Werschay - 7

**Opposed:** None – 0

**Motion carried 7-0**

**Motion to adjourn by Pollock. The meeting was adjourned at 4:10 PM.**